

The Constitution Revision Commission
COMMITTEE MEETING EXPANDED AGENDA

BONDING AND INVESTMENTS
Commissioner Smith, Chair
Commissioner Armas, Vice Chair

MEETING DATE: Tuesday, October 31, 2017
TIME: 2:00—4:00 p.m.
PLACE: 37 Senate Office Building, Tallahassee, Florida

MEMBERS: Commissioner Smith, Chair; Commissioner Armas, Vice Chair; Commissioners Gaetz, Kruppenbacher, Newsome, Rouson, and Solari

TAB	PROPOSAL NO. and INTRODUCER	PROPOSAL DESCRIPTION and COMMITTEE ACTIONS	COMMITTEE ACTION
1		Presentation by JoLinda Herring (on behalf of the Florida Association of Counties and the Florida League of Cities) on County and City Bonding	Presented

Bryant
Miller
Olive

FLORIDA
CONSTITUTION
REVISION
COMMISSION

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MUNICIPAL FINANCE

- ❖ Municipal Finance, or Public Finance, includes all aspects of state and local government finance
- ❖ Includes issuance of both taxable and tax-exempt debt

FLORIDA MUNICIPAL FINANCE

- Number and dollar amount of Bonds issued in the State of Florida from January 1-December 31, 2016

Type of Issuer	Number of Transactions	Total Dollar Amount
All Issuers in State*	549	\$17,018,942,049
Counties	82	4,269,443,421
Cities	141	3,466,236,728

*Does not include transactions completed by the State of Florida

Source: State of Florida Division of Bond Finance

FLORIDA MUNICIPAL FINANCE

Types of Projects

- Roads
- Utility Improvements
- Governmental Buildings
- Parks and Recreation
- Police/Fire Stations
- Parking Garages

WHAT IS A MUNICIPAL BOND?

- An evidence of indebtedness of state or local government
- An obligation of an Issuer to pay principal and interest
- A taxable or tax-exempt obligation



"I realize, gentlemen, that thirty million dollars is a lot of money to spend. However, it's not real money and, of course, it's not our money either."

AUTHORITY FOR ISSUANCE OF BONDS

Florida Constitution

Article VII, Section 12

- ❖ Local bonds.-Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:
 - (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation; or
 - (b) To refund outstanding bonds and interest and redemption thereon at a lower net average interest cost rate.

AUTHORITY FOR ISSUANCE OF BONDS

Article VIII, Section 1 – Counties

- ❖ (f) **NON-CHARTER GOVERNMENT.** Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

- ❖ (g) **CHARTER GOVERNMENT.** Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

AUTHORITY TO ISSUE BONDS

Article VIII, Section 2 – Municipalities

- ❖ (b) POWERS. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

AUTHORITY FOR ISSUANCE OF BONDS

Florida Statutes

Chapter 125, F.S.

- Section 125.01(1), F.S.-The legislative and governing body of a county shall have the power to carry on county government. To the extent not inconsistent with general or special law, this power includes, but is not restricted to, the power to:
 - (r) Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; *borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness*, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law.

AUTHORITY TO ISSUE BONDS

- Chapter 166, F.S.
 - Section 166.021(1), F.S.-As provided in s.2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.
 - Section 166.111, F.S.-Authority to borrow. The governing body of every municipality may borrow money, contract loans, and issue bonds as defined in s. 166.101 from time to time to finance the undertaking of any capital project or other project for the purposes permitted by the State Constitution and may pledge the funds, credit, property and taxing power of the municipality for the payment of such debts and bonds.

AUTHORITY FOR ISSUANCE OF BONDS

- Federal Tax Law
 - Section 103, Internal Revenue Code
 - §103. Interest on State and Local Bonds
 - (a) Exclusion. Except as provided in subsection (b), gross income does not include interest on any State or local bond.

FLORIDA ISSUERS

- Cities and Counties
 - Issued under home rule powers, subject to Charter limitations
- Special Districts – Limited Purpose Governmental Entities
 - Only have the powers specifically granted to them by law
 - Includes School Districts, Expressway Authorities, Hospital Districts, Industrial Development Authorities, Housing Finance Authorities, Health Facilities Authorities, Higher Education Facilities Authorities and other special taxing districts

3 TYPES OF BONDS

I. General Obligation Bond

- Pledges the “full faith and credit” of the governmental Issuer
- Payable from ad valorem taxes (maturity > 1 year)
- Florida Constitutional requirements:
- Issued only to finance capital projects
- Can only be issued when:
 - Voters approve a referendum authorizing issuance or
 - The Bonds refund outstanding general obligation bonds and lowering debt service

3 TYPES OF BONDS

II. Revenue Bond

- May be issued without voter approval (unless required by local law)
- Limited Obligation – secured by a pledge of a specific revenue source
 - Excise Taxes (sales tax, gas tax, utility services tax)
 - Enterprise Fund Revenues (water and sewer system, solid waste, airport, parking)
 - May be secured by a Covenant to Budget and Appropriate from Non-Ad Valorem Revenues
 - Special Assessment – assessments levied against property benefitted by the improvements being financed
 - Tax Increment – community redevelopment; based on additional tax revenues generated because of increase in assessed value over a base year

3 TYPES OF BONDS

III. Conduit Bond

- Issued by a Governmental Entity on behalf of a Company-Borrower (generally manufacturing, housing or health care)
- Payable from repayment by the Company-Borrower of the loan of the bond proceeds

FINANCING TEAM

- Issuer
- Issuer's Attorney
- Company-Borrower (if conduit bond)
- Financial Advisor
- Bond Counsel
- Disclosure Counsel
- Underwriter or Bank
- Underwriter's Counsel or Bank's Counsel
- Other Appropriate Parties

FINANCING TEAM

- Issuer
 - Communicates Issuer Decisions
 - Oversees Project
 - Determines When Funds Needed
 - Coordinates Issuer Staff and Input

FINANCING TEAM

- Issuer's Attorney
 - Initial Due Diligence
 - Research State Law and Issuer's Organizational documents to determine authority of Issuer to issue Bonds
 - Litigation
 - Participates in proceedings, reviews all documents, including the Official Statement and delivers the Issuer's Counsel Opinion at closing

FINANCING TEAM

- Financial Advisor
 - Recommends type of debt to Issuer (e.g., bond, bank loan, pool loan)
 - Advises Issuer on structure of debt (maturity, amortization schedule)
 - Advises Issuer on security for debt
 - Negotiates terms of borrowing on behalf of Issuer
 - Advises on fairness of pricing, terms and bond ratings

FINANCING TEAM

- Bond Counsel
 - Consults with Issuer's Attorney on Issuer's authority to issue Bonds
 - Consults with Underwriter or Bank regarding the structure of the deal
 - Prepares authorizing resolution, financing documents and closing documents
 - Reviews Official Statement
 - Issues Tax Opinion

FINANCING TEAM

- Disclosure Counsel
 - Drafts Official Statement
 - Conducts Due Diligence Investigation
 - Prepares Continuing Disclosure Certificate
 - Renders 10b-5 Opinion



"O.K.—let's review what you didn't know and when you didn't know it."

FINANCING TEAM

- Underwriter
 - Participates in structuring the transaction
 - Purchases the Bonds from Issuer for resale to investors
 - Assists with ratings and bond insurance

FINANCING TEAM

- Underwriter's Counsel
 - Prepares the Bond Purchase Contract
 - Reviews all documents prepared by Bond Counsel
 - Advises Underwriter

FINANCING TEAM

- Other Appropriate Parties
 - Rating Agencies
 - Rate Consultant
 - Engineer
 - Trustee
 - Escrow Agent
 - Bond Insurer



ATTORNEY
SIX-PACK

Go
Cullen

WHAT IS THE PROCESS FOR ISSUING A BOND?

- Define the Project
- Assemble the Financing Team (may involve bid process)
- Enact Bond Ordinance or Adopt Resolution
- Negotiate terms, develop commitment letter or term sheet (may be part of bid process)
- Draft and develop documents, including bond ordinance or resolution and loan agreement
- Adopt ordinance or resolution (may involve agenda deadlines)
- Prepare closing documents and opinions
- Execute Loan Documents and Closing Documents
- Deliver Bonds against payment of proceeds (Fund Loan)



"I'm from Simmersby, Blomm & Tuggarton, down the hall. Can you spare us a few dense paragraphs of legal boilerplate?"

FLORIDA STATUTORY REFERENCES

- Florida Statutes
 - Section 125.01, F.S.
 - Section 166.01, F.S.
 - Section 218.385, F.S.
 - Section 517.06, F.S.
 - Chapter 75, F.S.
 - Chapter 159, F.S.

SINCE THE BEGINNING

"CHERISH PUBLIC CREDIT"



George Washington
1st President of the United States
(1789-1797)

RECOMMENDED CHANGES

FLORIDA CONSTITUTION

ARTICLE VII

SECTION 10. **Pledging credit.**—Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person; but this shall not prohibit laws authorizing:

- (a) the investment of public trust funds;
- (b) the investment of other public funds in obligations of, or insured by, the United States or any of its instrumentalities;
- (c) the issuance and sale by any county, municipality, special district or other local governmental body of (1) revenue bonds to finance or refinance the cost of capital projects for airports or port facilities, or (2) revenue bonds to finance or refinance the cost of capital projects on behalf of non-governmental entities for industrial or manufacturing plants to the extent that the interest thereon is exempt from income taxes under the then-existing laws of the United States, when, in either case, the revenue bonds are payable solely from revenue derived from the sale, operation or leasing of the projects. If any project so financed, or any part thereof, is occupied or operated by any private corporation, association, partnership or person pursuant to contract or lease with the issuing body, the property interest created by such contract or lease shall be subject to taxation to the same extent as other privately owned property.
- (d) a municipality, county, special district, or agency of any of them, being a joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person.

History.—Am. H.J.R. 1424, 1973; adopted 1974.

SECTION 12. **Local bonds.**—Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

- (a) to finance or refinance capital projects authorized by law and only when approved by vote of the electors ~~who are owners of freeholds therein not wholly exempt from taxation~~; or
- (b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate.

CONSTITUTION REVISION COMMISSION
APPEARANCE RECORD

(Deliver completed form to Commission staff)

10/31/2019

Meeting Date

Proposal Number (if applicable)

*Topic Bonds

Amendment Barcode (if applicable)

*Name Johinda Herring

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Street

Phone 305-374-7349

Miami, FL 33131
City State Zip

Email jherring@bmalaw.com

*Speaking: For Against Information Only

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Are you representing someone other than yourself? Yes No

If yes, who? Florida League of Cities; Florida Association of Counties

Are you a registered lobbyist? Yes No

Are you an elected official or judge? Yes No

While the Commission encourages public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

Information submitted on this form is public record.

***Required**